

Serial No. 09/675,671
Docket No. 4035-0116p
Art Unit 1761
Page 4

REMARKS

Applicants thank the Examiner for the thorough consideration given the present application. Claims 12-16 are currently being prosecuted. Claim 12 is amended. Claim 12 is independent. The Examiner is respectfully requested to reconsider her rejections in view of the amendments and remarks set forth herein.

Reasons for Entry of Amendments

Entry of the present Amendment is respectfully requested in view of the fact that the changes herein automatically place the application in condition for allowance.

In the alternative, if the Examiner does not agree that this application is in condition for allowance, it is respectfully requested that the present Amendment be entered for the purpose of appeal. This Amendment was not presented at an earlier date in view of the fact that Applicants did not fully appreciate the Examiner's position until the final Office Action was reviewed.

Rejection under 35 U.S.C. §103(a)

Claims 12-16 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Mayfield (U.S. 5,928,692) in view of Mally et al. (U.S. 4,832,970) and Nakajima (U.S. 4,670,276). This rejection is respectfully traversed.

Independent claim 12 as currently written recites a combination of elements directed to a laminated cheese food, including a multilayer structure produced by piling a plurality of

Serial No. 09/675,671
Docket No. 4035-0116p
Art Unit 1761
Page 5

laminated cheese foods, each of the plurality of laminated cheese foods of the multilayer structure having at least three layers, the at least three layers including:

two external layers of platy food material containing cheese, and having inherent releasability from external layers of adjoining ones of the plurality of laminated cheese foods when piled; and

an intermediate layer of platy food material, wherein the intermediate layer may be formed of a plurality of intermediate layers of platy food material which inherently bond together, the intermediate layer being disposed between and being inherently capable of bonding to the two external layers of platy food material,

wherein each of the plurality of laminated cheese foods of the multilayer structure is releasable from the adjoining ones of the plurality of laminated cheese foods of the multilayer structure.

Full support for the novel combination of elements set forth in independent claim 12, as amended herein, can be found in the specification, for example on pages 20-21, wherein it is disclosed that "In the external layers (A), (B), the inventor used a releasable platy food material containing cheese.....". See also, FIG. 7, which illustrates a multilayer structure produced from piling a plurality of laminated cheese foods t_1 , t_2 , t_3 , etc, each of these laminated cheese foods including external layers A, B, and intermediate layer C.

Serial No. 09/675,671
Docket No. 4035-0116p
Art Unit 1761
Page 6

It is respectfully submitted that the combination of elements set forth in independent claim 12 is not disclosed or made obvious by the prior art of record, including Mayfield, Mally et al., and Nakajima.

A careful review of the Mayfield document indicates that Mayfield fails to disclose a multilayer structure produced by piling a plurality of laminated cheese foods, each of said plurality of laminated cheese foods having at least three layers, each of the at least three layers, including two external layers of platy food material containing cheese, and having inherent releasability from external layers of adjoining ones of the plurality of platy food materials when piled, and an intermediate layer of platy food material, as set forth in independent claim 12 as amended herein.

The Applicant concedes that Mayfield discloses that the amorphous layers 12 and 14 of product 10 may be cheese (For example, see Mayfield column 4, line 52), but that the amorphous layers making up the food product 10 are wrapped with a non-amorphous film 20 made by mixing a gelling substance such as gelatin, pectin, or agar with water (For example, see Mayfield column 4, lines 1-4), and is perfectly clear, odorless, and tasteless (For example, see Mayfield column 4, lines 30-31). Thus, there is no disclosure whatsoever that the layers 12, 14 of Mayfield (even if they do contain cheese) are inherently releasable.

In contrast to the present invention, in which the exterior layers A, B have inherent releasability from each other, the Mayfield disclosure is directed toward packaging sticky and

Serial No. 09/675,671
Docket No. 4035-0116p
Art Unit 1761
Page 7

amorphous food products 10 wrapped with an non-amorphous edible film 20 so that the layer 12, 14 of the food products 10 do stick to layers 12, 14 of another food product 10.

The Applicant respectfully submits, that inasmuch as Mayfield teaches a food product that is wrapped with an edible film 20 so that it is no longer sticky, and so that it be handled easily, there can be no suggestion whatsoever that the layers 12, 14 of one Mayfield food product 10 are releasable from layers 12, 14 of another food product 10.

As found in *W.L. Gore & Associates v. Garlock, Inc.* 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), a prior art reference must be considered in its entirety, i.e., as whole, including portions that would lead away from the claimed invention. The Applicant submits that, Mayfield, in fact, teaches away from the present invention.

For example, Mayfield teaches:

In Mayfield column 3, lines 8-12: "Thus, there remains a need for preparing and packaging such sticky edible products in manners which would allow easy handling of such products and will not permit transfer of moisture from such products to other products which come in contact with such sticky products".

In Mayfield column 3, lines 17-24: "The present invention addresses some of the above-noted problems and needs relating generally to the handling and use of sticky food products and provides methods of coating and/or covering such food products with edible, substantially non-sticky materials for use during preparation of such food products and

*Serial No. 09/675,671
Docket No. 4035-0116p
Art Unit 1761
Page 8*

methods for packaging such coated food products for long term storage, shipping and handling of such food products”.

In Mayfield column 5, lines 55-65: “Although the sandwich-sized slice is sealed in a film, the food and film may be eaten together because the film is edible. Preferably, the film dissolves immediately when eaten and either provides no flavor or an agreeable flavor. For mass production, each sandwich-sized slice is wrapped and sealed in a non-edible plastic film to provide single-slice servings. Alternatively, a separator sheet may be placed between the sandwich-sized slices forming a stack which may be packaged in a non-edible plastic packaging or other suitable packaging”.

In Mayfield column 7, lines 19-31: With references to FIG. 2, a sandwich 40 is shown in perspective. A sandwich filler 42 is sandwiched between a first slice 44 of bread and a second slice 46 of bread. An edible film 48 encloses and seals an amorphous, semi-solid food within. The edible film 48 provides a moisture barrier around the amorphous, semi-solid food. As a moisture barrier, the edible film 48 reduces soggiess in the first and second slices of bread 44. The edible film 48 allows one to handle the amorphous, semi-solid food without contact with the amorphous, semi-solid food, which may be sticky and messy.

In Mayfield column 7, lines 38-60: “Numerous examples can be provided of foods and/or edible films according to the present invention. An example of using an edible film as a moisture barrier is with a cheese and cracker sandwich, where the edible film

*Serial No. 09/675,671
Docket No. 4035-0116p
Art Unit 1761
Page 9*

provides a moisture barrier between the cheese and the crackers, preventing sogginess and/or staleness in the cracker”.

Thus, while the Mayfield discloses that layer 12, 14 may contain cheese, the Applicant respectfully submits that Mayfield document is deficient, at least for its failing to teach or suggest that these layers are inherently releasable from external layers of adjoining laminated cheese foods, as set forth in the present invention. The layers 12, 14 in one food product 10 of Mayfield do not adjoin the layers 12, 14 of an another food product 10 of Mayfield, because the layers 12, 14 of the one product are separated from the layers 12, 14 of all other Mayfield food products 10 by the edible film 20 wrapped around or covering the outer surfaces of each food product 10. Thus, the layers 12, 14 of one food product 10 neither adjoin nor make contact with layers 12, 14 of other food products 10. Thus, it is improper for the Examiner to conclude that layers 12, 14 in one food product would be releasable from the layers 12, 14 of another food product if they were to come contact with each other.

Further, even though Mayfield discloses that an edible film 20 of one package may be come into contact with and be releasable the edible film 20 of an adjoining package, Mayfield is also deficient because of its failure to teach or suggest that the edible film contains cheese. Mayfield explicitly discloses that the edible film is made of gelatin, petin, or agar mixed with water, and the edible film is perfectly clear and tasteless. Thus, Mayfield fails to teach or suggest two external layers of platy food material containing cheese and

Serial No. 09/675,671
Docket No. 4035-0116p
Art Unit 1761
Page 10

having inherent releasability from external layers of adjoining laminated cheese foods. Again, with Mayfield, there is no "external layer-to- external layer" or contact.

In view of the above, the Applicant concludes that the **Examiner has failed to consider the Mayfield document as a whole** when using Mayfield in combination with Mally et al. and Nakajima in rejecting the present invention as set forth in independent claim 8.

The Applicant's argument is further supported by *In re Graselli*, 713 F.2d 721, 743,218 USPQ 769,779 (Fed Cir. 1983), which found that it is improper to combine references where the reference teaches away from their combination.

Since the Mally et al. and Nakajima documents fail to make up for the deficiencies of Mayfield, combining Mayfield, Mally et al. and Nakajima to reject claim 8 of the present invention is not proper.

Thus, for the reasons stated above, it is respectfully submitted that the combination of elements set forth in independent claim 12 is not disclosed or made obvious by the prior art of record, including Mayfield, Mally et al. and Nakajima.

Thus, it is believed that independent claim 12 is in condition for allowance and that dependent claims 13-16 are also allowable due to their dependence on allowable claim 12, as well as for the additional novel limitations contained therein.

For example, the Examiner will also note that dependent claim 16 is amended herein to recite a novel combination of elements directed to the laminated cheese food package

Serial No. 09/675,671
Docket No. 4035-0116p
Art Unit 1761
Page 11

according to Claim 12, the package being formed by wrapping the multilayer structure produced by piling said plurality of laminated cheese foods, each of said plurality of laminated cheese foods having said at least three layers. None of the references cited by the examiner teaches or suggest a package formed by wrapping a multilayer structure produced by piling a plurality of laminated cheese foods, each having three or more layers, as set forth in claim 16 as amended herein.

In view of the above amendments and arguments, reconsideration and withdrawal of the rejection under 35 U.S.C. §103(a) are, therefore, respectfully requested. All claims of the present application should be deemed allowable.